

# Workplace Investigations

## Contributing Editors

*Phil Linnard at Slaughter and May*  
*Clare Fletcher at Slaughter and May*

## 08. Can the employer search employees' possessions or files as part of an investigation?



### Brazil

Author: *Patricia Barboza, Maury Lobo*  
at CGM

No; employers are only generally allowed to search the work tools they provide to employees, such as company mobile phones, electronic files, and company email and other electronic communications. However, they may also request that employees turn over any company documents in their possession.

Searches of employees' private possessions or files during an investigation can only occur with the verifiable consent of the employee.

Last updated on 14/09/2023



### Switzerland

Author: *Laura Widmer, Sandra Schaffner*  
at Bär & Karrer

The basic rule is that the employer may not search private data during internal investigations.

If there is a strong suspicion of criminal conduct on the part of the employee and a sufficiently strong justification exists, a search of private data may be justified.<sup>[1]</sup> The factual connection with the employment relationship is given, for example, in the case of a criminal act committed during working hours or using workplace infrastructure.<sup>[2]</sup>

---

<sup>[1]</sup> Claudia Fritsche, *Interne Untersuchungen in der Schweiz: Ein Handbuch für regulierte Finanzinstitute und andere Unternehmen*, Zürich/St. Gallen 2013, p. 168.

<sup>[2]</sup> Claudia Fritsche, *Interne Untersuchungen in der Schweiz: Ein Handbuch für regulierte Finanzinstitute und andere Unternehmen*, Zürich/St. Gallen 2013, p. 168 et seq.

Last updated on 15/09/2022

## 24. What next steps are available to the employer?



### Brazil

Author: *Patricia Barboza, Maury Lobo*  
at CGM

If investigators conclude that a breach has occurred, the company may determine the appropriate response, which may include verbal or written warnings; the suspension of employment without payment (for up to 29 days) or termination of employment without or with cause; a review of policies or operational protocols; and new training modules or the updating of training modules.

If the investigators conclude that a breach has not occurred but determine that the report was made in good faith, the case must be set aside. If the investigators determine that the report was made in bad faith, the employer must determine how to respond to the bad-faith reporter.

Last updated on 14/09/2023



### Switzerland

Author: *Laura Widmer, Sandra Schaffner*  
at Bär & Karrer

If the investigation uncovers misconduct, the question arises as to what steps should be taken. Of course, the severity of the misconduct and the damage caused play a significant role. Furthermore, it must be noted that the cooperation of the employee concerned may be of decisive importance for the outcome of the investigation. The possibilities are numerous, ranging, for example, from preventive measures to criminal complaints.<sup>[1]</sup>

If individual disciplinary actions are necessary, these may range from warnings to ordinary or immediate termination of employment.

---

[1] David Rosenthal et al., *Praxishandbuch für interne Untersuchungen und eDiscovery*, Release 1.01, Zürich/Bern 2021, p. 180 et seq.

Last updated on 15/09/2022

#### Contributors




#### Brazil

Patricia Barboza  
Maury Lobo  
CGM



#### Switzerland



Laura Widmer  
Sandra Schaffner  
*Bär & Karrer*

[www.internationalemploymentlawyer.com](http://www.internationalemploymentlawyer.com)